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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA-EASTERN DIVISION

CODY AUSTIN BISSETT,) Case No. ED CV 14-00847-AS
Plaintiff,) **MEMORANDUM OPINION**
v.)
CAROLYN W. COLVIN,)
Acting Commissioner of the)
Social Security Administration,)
Defendant.)
_____)

PROCEEDINGS

On May 7, 2014, Plaintiff filed a Complaint seeking review of the denial of his application for Supplemental Security Income. (Docket Entry No. 3). The parties have consented to proceed before the undersigned United States Magistrate Judge. (Docket Entry Nos. 9-10). On September 17, 2014, Defendant filed an Answer along with the Administrative Record ("AR"). (Docket Entry Nos. 13-14). The parties filed a Joint Position Statement ("Joint Stip.") on December 2, 2014, setting forth their respective positions regarding Plaintiff's claims. (Docket Entry No. 15).

1 The Court has taken this matter under submission without oral
 2 argument. See C.D. Cal. L.R. 7-15; "Order Re: Procedures In Social
 3 Security Case," filed May 12, 2014 (Docket Entry No. 7).

4 5 **BACKGROUND AND SUMMARY OF ADMINISTRATIVE DECISION**

6
 7 On August 12, 2011, Plaintiff (through his mother) filed an
 8 application for Supplemental Security Income, alleging a disability
 9 since July 14, 1993. (AR 160-63). On December 13, 2012, Administrative
 10 Law Judge ("ALJ"), Jesse Pease, heard testimony from Plaintiff,
 11 Plaintiff's adoptive father, and vocational expert Troy Scott. (See AR
 12 30-75). On January 25, 2013, the ALJ issued a decision denying
 13 Plaintiff's application. (See AR 11-24). After determining that
 14 Plaintiff had severe impairments -- "attention deficit hyperactivity
 15 disorder (ADHD), combined; history of traumatic brain injury; specific
 16 learning disability; anxiety/mood disorder; and binocular vision
 17 disorder" (AR 13-14)¹ --, the ALJ found that Plaintiff had the residual
 18 functional capacity ("RFC")² to perform medium work³ with the following
 19 exceptions: performance of two-to-three step complex instructions;
 20 limited to a non-public environment; limited to occasional (no more than
 21 1/3 of the day) interpersonal contact with others; no performance of
 22 face-paced work, such as work with conveyor belts; no climbing ladders,

23
 24 ¹ The ALJ found that cerebral palsy was not a medically
 25 determinable impairment. (AR 14).

26 ² A Residual Functional Capacity is what a claimant can still
 27 do despite existing exertional and nonexertional limitations. See 20
 C.F.R. § 404.1545(a)(1).

28 ³ "Medium work involves lifting no more than 50 pounds at a time
 with frequent lifting or carrying of objects weighing up to 25 pounds."
 20 C.F.R. §§ 404.1567(c) and 416.967(c).

1 ropes or scaffolds; and avoidance of extreme cold, hazardous machinery
2 and unprotected heights. (AR 15-22). After finding that Plaintiff had
3 no past relevant work (AR 22), the ALJ found that jobs existed in
4 significant numbers in the national economy that Plaintiff could
5 perform, and therefore found that Plaintiff was not disabled within the
6 meaning of the Social Security Act. (AR 22-23).

7
8 Plaintiff requested that the Appeals Council review the ALJ's
9 decision. (AR 6). The request was denied on March 8, 2014. (AR 1-3).
10 The ALJ's decision then became the final decision of the Commissioner,
11 allowing this Court to review the decision. See 42 U.S.C. §§ 405(g),
12 1383(c).

13 14 **PLAINTIFF'S CONTENTIONS**

15
16 Plaintiff alleges that the ALJ erred in failing to properly: (1)
17 assess the credibility of the statements and testimony provided by
18 Plaintiff's parents; and (2) develop and consider the vocational issues
19 in this case. (See Joint Stip. at 3-7, 16-22).

20 21 **DISCUSSION**

22 23 **A. The ALJ Did Not Fail to Properly Assess Plaintiff's Testimony and** 24 **Lay Witness Testimony**

25
26 Plaintiff asserts that the ALJ failed to properly assess the
27 statements and testimony of Plaintiff's mother, Daniella Bissett, and
28 Plaintiff's adoptive father, Craig Bisset. Plaintiff further asserts

1 that the ALJ failed to properly assess Plaintiff's testimony. (See
2 Joint Stip. at 3-12).⁴ Defendant asserts that the ALJ properly evaluated
3 Plaintiff's parents' and Plaintiff's credibility. (See Joint Stip. at
4 12-19).

5
6 1. Plaintiff's Testimony
7

8 Plaintiff made the following statements in a Function Report-Adult
9 dated December 3, 2011:
10

11 (1) he lives at home with his family; (2) with respect to daily
12 activities, he wakes up, takes medicine, goes to school, does
13 chores after school, does homework, watches television, and
14 (in his spare time) talks with friends and does magic tricks;
15 (3) he takes care of his sister by playing video games with
16 her or taking her swimming; (4) he gives water and food to the
17 dogs; (5) he should try not to argue with his sister and to
18 serve as a good example to her; (6) he could use his right arm
19 as a baby, but the incident caused him to be paralyzed on his
20

21 ⁴ Plaintiff's claim concerning the ALJ's assessment of lay
22 witness testimony is based, in part, on statements purportedly made by
23 his mother in a Disability Report (i.e., Plaintiff discontinued therapy
24 for his right hand based on the lack of improvement after several years;
25 Plaintiff has been in physical therapy since he was 5 months old;
26 Plaintiff has been diagnosed with binocular vision disorder (and
27 sometimes has double vision), but two years of eye therapy resulted in
28 minimal improvement; without constant reminders and assistance,
Plaintiff is unable to provide basic hygiene for himself; and
Plaintiff's mother organizes Plaintiff's medications and gives them to
him daily). (See Joint Stip. at 4, citing AR 246). Since it is not
clear who made those statements, the Court will not discuss or address
them. However, it appears that these statements are similar to
statements made by Plaintiff's mother in the Function Report-Adult-Third
Party, as discussed in the Court's opinion.

1 right side, for which he had to go to therapy for several
2 years; (7) his condition affects his ability to dress
3 according to weather conditions, bathe (use soap, clean ears,
4 needs a reminder), shave (needs a reminder), cut fingernails
5 and toenails (needs a reminder), and take medication and acne
6 creams (needs a reminder); (8) he prepares his own breakfast
7 daily and dinner approximately two times a week (frozen
8 dinners, sandwiches, cereal, reheats leftovers); (9) he does
9 household chores (he has to be asked, and it needs to be
10 written down) -- putting away dishes and laundry, giving dogs
11 water, and mowing (with supervision) -- after school
12 (approximately 1 1/2 hours) and every other weekend (mowing,
13 1 hour) (10) he goes outside 5 days a week on foot or
14 skateboard or riding in a car (when he stays home he hangs out
15 in his room or plays video games downstairs); he does not
16 drive because he is scared about getting in an accident; (11)
17 he shops in stores and by computer for magic tricks and
18 clothes (his mom does most shopping); (12) he does not pay
19 bills, but he can count change, handle a savings account and
20 use a checkbook (however, he does not know how to write a
21 check); (13) his hobbies and interests are magic, Boy Scouts
22 (which ended), Eagle Scouts (with a lot of help), hanging out
23 with friends at school, and television; (14) he phones others
24 and does things with others (only at school); (15) his
25 condition affects his walking (he sometimes drags his toes),
26 talking (difficult to understand his ideas; he has speech at
27 school), hearing (does not hear what others say), seeing
28 (double vision), memory (short term), completing tasks (that

1 involve steps), concentration (has medication for ADHD),
2 understanding, following instructions, and using hands (his
3 right hand has no strength and he drops things); (16) he can
4 walk 1 hour before needing to rest for 50 minutes; (17) he can
5 pay attention for 15 minutes (when medicated); (18) he
6 finishes what he starts; (19) he has difficulty following
7 instructions for recipes, but can follow the instructions for
8 chores; (20) he can follow only the first and second spoken
9 instructions; (21) he gets along well with teachers (although
10 he has a hard time asking questions); (22) he does not handle
11 stress well; he yells and has an attitude; (23) he does not
12 handle changes in routine well; structure helps him avoid
13 behavioral problems; (24) he has not noticed any unusual
14 behaviors or fears; and (25) he needs glasses for double
15 vision; he has done eye therapy (exercises) for a year.

16
17 (See AR 196-204).
18

19 At the hearing, Plaintiff (who was 19 years old at the time of the
20 hearing) testified as follows:
21

22 In high school (Riverside Preparatory) he spent two
23 months (four hours on Saturdays and Sundays) in a TTP program
24 training (stacking drinks) for a position with Dollar Tree.
25 He stopped his training when, on June 24, 2012, he got hit in
26 the head and neck and broke his glasses. He finished high
27 school, which he found to be stressful. He took regular
28 classes, but was given more time to complete assignments and

1 tests. He did not play sports in high school, and he last
2 played sports when he was 4 or 5 years old. (See AR 37-39,
3 42, 44-45). When asked if he thought he could work, he said,
4 "No. I need a trainer." He needs a trainer -- someone to
5 supervise him -- so that he does not do anything wrong. When
6 asked why he thought he would do something wrong, he replied,
7 "Cause sometimes I do something different than . . . the
8 workers say. Like I actually forget things like tasks and all
9 that. Like I have more than three tasks I forget one of them
10 and have to go back." He did not think he could get a job
11 because he did not know what job he wanted. (See AR 39, 43).
12

13 When asked whether he wanted to go out and work and get
14 an apartment, he testified he did, but he was scared to drive.
15 (See AR 43).
16

17 He mentally (smartness level) is the same as he was five
18 years ago. He is a little weak in his right hand; he drops
19 things. He forgets things. (See AR 40-42, 47).
20

21 At the house, he does dishes, takes clothes from the
22 washer and puts them in the dryer, puts away laundry, and mows
23 lawns (with permission and with supervision). (See AR 43-44).
24

25 Although it was tough to become an Eagle Scout, he did it
26 with the help of his father. His project was to fix and paint
27 a sign, with the assistance of other people, in the Mojave
28

1 Regional Park in Victorville. (The City approved of the sign
2 quality.) (See AR 45-47).

3
4 After briefly summarizing Plaintiff's testimony (AR 16), and
5 finding that Plaintiff's Function Report-Adult was "not probative as to
6 claimant's personal assessment of his symptoms and limitations" because
7 "the responses on this form are almost identical to a function report
8 completed by the claimant's mother almost three days before on August
9 31, 2011" (AR 16), the ALJ concluded: "After careful consideration of
10 the evidence, the undersigned finds that the claimant's medically
11 determinable impairments could reasonably be expected to cause some of
12 the alleged symptoms; however, the claimant's statements concerning the
13 intensity, persistence and limiting effects of these symptoms are not
14 credible to the extent that they are inconsistent with the residual
15 functional capacity assessment herein." (Id.).

16
17 The ALJ then provided the following assessment of Plaintiff's
18 credibility:

19
20 The claimant has described daily activities that are not
21 limited to the extent one would expect, given the complaints
22 of disabling symptoms and limitations. The record documents
23 the claimant's activities of daily living included the
24 following: he performed household chores; he could make light
25 meals; he taught himself how to do magic tricks and he was
26 good at performing those tricks; he socialized with friends
27 and romantic interests in person and on the telephone; he
28 maintained a relationship with a girl for nine months; he

1 could take the bus alone to meet friends; he played the
2 trumpet in the high school band; he reported he had a B
3 average in high school; he was taking a college course; he
4 played videogames; and he became an Eagle Scout, although with
5 guidance and encouragement from his parents and scout leader
6 (Testimony; Ex. 5E; Ex. 5F; and Ex. 10F). Some of the
7 physical and mental abilities and social interactions required
8 in order to perform these activities are the same as those
9 necessary for obtaining and maintaining employment. While the
10 scope and extent of these regular activities may change from
11 day to day, the claimant's ability to participate in such
12 activities tends to suggest the claimant is far more capable
13 than claimant alleges and undermines the credibility of the
14 claimant's allegations of disabling functional limitations.
15

16 The evidence suggests the claimant's unemployment was not
17 due to the limiting effects of the claimant's allegedly
18 disabling impairments. The claimant testified he wanted to be
19 independent from his parents in the future but, currently, he
20 did not know what job he would want.
21

22 The credibility of the claimant's allegations regarding
23 the severity of the claimant's symptoms and limitations is
24 diminished because those allegations are greater than expected
25 in light of the objective evidence of record. The medical
26 evidence documents that mental health treatment was effective
27 and the claimant was stable on psychiatric medications. The
28 medical evidence of record also documents orthoptics therapy

1 was effective in treating the claimant's binocular vision
2 disorder and the claimant's history of traumatic brain injury
3 resulted in only mild right sided weakness. The positive
4 objective clinical and diagnostic findings since the
5 application date detailed below do not support more
6 restrictive functional limitations than those assessed herein.

7
8 (AR 16-17).
9

10 A claimant initially must produce objective medical evidence
11 establishing a medical impairment reasonably likely to be the cause of
12 the subjective symptoms. Smolen v. Chater, 80 F.3d 1273, 1281 (9th Cir.
13 1996); Bunnell v. Sullivan, 947 F.2d 341, 345 (9th Cir. 1991). Once a
14 claimant produces objective medical evidence of an underlying impairment
15 that could reasonably be expected to produce the pain or other symptoms
16 alleged, and there is no evidence of malingering, the ALJ may reject the
17 claimant's testimony regarding the severity of his pain and symptoms
18 only by articulating specific, clear and convincing reasons for doing
19 so. Brown-Hunter v. Colvin, __ F.3d __, 2015 WL 462013 * 5 (August 5,
20 2015) (citing Lingenfelter v. Astrue, 504 F.3d 1028, 1036 (9th Cir.
21 2007)); see also Smolen v. Chater, *supra*; Reddick v. Chater, 157 F.3d
22 715, 722 (9th Cir. 1998); Light v. Social Sec. Admin., 119 F.3d 789, 792
23 (9th Cir. 1997).
24

25 Here, substantial evidence supported the ALJ's finding that
26 Plaintiff's testimony about the intensity, persistence and limiting
27 effects of the symptoms was not fully credible.
28

1 The ALJ's finding that Plaintiff's ability to perform certain
2 activities of daily living, such as household chores, making light
3 meals, performing magic tricks, socializing with friends and romantic
4 interests in person and on the telephone, maintaining a 9-month
5 relationship with a girl, taking the bus alone to meet friends, playing
6 trumpet in the high school band, playing video games, having a B average
7 in high school, taking a college course, playing video games, and
8 becoming an Eagle Scout (with extra guidance and encouragement) (see AR
9 43-44, 46, 54-56, 58-59, 188-91, 196-200, 463, 602-03, 613, 637-38, 806,
10 862, 868), was a clear and convincing reason for discrediting
11 Plaintiff's testimony. See Rollins v. Massanari, 261 F.3d 853, 857 (9th
12 Cir. 2001). As the ALJ found, Plaintiff's participation in these daily
13 activities "tends to suggest that the claimant is far more capable than
14 claimant alleges and undermines the credibility of the claimant's
15 allegations of disabling functional limitations." See Morgan v. Comm'r
16 of Soc. Sec. Admin., 169 F.3d 595, 600 (9th Cir. 1999)("If a claimant is
17 able to spend a substantial part of his day engaged in pursuits
18 involving the performance of physical functions that are transferable to
19 a work setting, a specific finding as to this fact may be sufficient to
20 discredit a claimant's allegations."); Reddick v. Chater, 157 F.3d 715,
21 722 (9th Cir. 1998)("Only if the level of activity were inconsistent
22 with the Claimant's claimed limitations would these activities have any
23 bearing on Claimant's credibility.").

24
25 Moreover, the ALJ properly discredited Plaintiff's testimony about
26 his symptoms and limitations because it was not supported by the
27 objective medical evidence. See Burch v. Barnhart, 500 F.3d 676, 681
28 (9th Cir. 2005)("Although lack of medical evidence cannot form the sole

1 basis for discounting pain testimony, it is a factor that the ALJ can
2 consider in his credibility analysis); Rollins v. Massanari, 261 F.3d
3 853, 857 (9th Cir. 2001)("While subjective pain testimony cannot be
4 rejected on the sole ground that it is not fully corroborated by
5 objective medical evidence, the medical evidence is still a relevant
6 factor in determining the severity of the claimant's pain and its
7 disabling effects); Morgan v. Commissioner, 169 F.3d 595, 599-60 (9th
8 Cir. 1999).

9
10 The ALJ properly found that, "[w]ith respect to his mental
11 impairments, treatment records from Kaiser Permanente document the
12 claimant was stable with mental health treatment." (AR 17, citing AR
13 261-567, 630-800, 805-75). The medical records support the ALJ's
14 statement that "psychotherapy sessions conducted since January of 2009
15 reflect the claimant was consistently doing well." (AR 17). On August
16 23, 2010, Plaintiff was feeling stress because of a request by his peers
17 to help solve their problems with other peers, and Plaintiff was found
18 to be only slightly anxious. (See AR 637-38). On December 21, 2011,
19 although Plaintiff's mother reported Plaintiff was becoming more moody
20 and agitated, she attributed it to the adjustment in his medication; and
21 Plaintiff was found to be more talkative. (See AR 805-06). On August
22 8, 2012, Plaintiff was found to be more talkative and less depressed and
23 anxious, and Plaintiff reported he had not had any anger outbursts the
24 last 2 months. (See AR 861-62). On October 22, 2012, Plaintiff was
25 found to be more calm, less depressed and anxious, and there had not
26 been any anger outbursts in 2 months; Plaintiff's mother reported that
27 Plaintiff had started college (one math class) and has been riding the
28 bus to school; and Plaintiff reported that he will take the bus to visit

1 a female friend, that he has gone on dates with other female friends,
2 that he is undergoing testing at college to see what kind of work he can
3 do, and that he has not lost his temper. (See AR 867-68).
4

5 The medical records also support the ALJ's statement that
6 "[p]sychiatric medication management visits also demonstrate that the
7 claimant is doing well and stable on psychiatric medications, with no
8 reported side effects." (AR 17). These records include the following
9 notations:
10

11 a. 2009-2010
12

13 On January 5, 2009, Plaintiff, who was taking Risperdal, Concerta
14 and Fluoxetine, "continues to do well. No problems. No side effect."
15 (See AR 262). On October 7, 2009, Plaintiff, who was taking Isoniazi,
16 Pyridoxine, Risperdal, Methylin, Fluoxetine and Concerta, "has been
17 doing well." (See AR 326-27). On January 6, 2010, Plaintiff, who was
18 taking Fluoxetine, Methylphenidate and Concert, "has been doing well. .
19 . . No problems with hyperactivity, impulsivity, and distractibility."
20 (See AR 375-76). On April 21, 2010, Plaintiff, who was taking
21 Fluoxetine, Concerta and Methylphenidate, "had 1 incident of impulsively
22 hitting a door at home on a day when he did not take his afternoon
23 Methylphenidate," but "Overall, he has continued to do well and is more
24 socially and emotionally mature. No side effect from medicines." (See
25 AR 487-78). On September 2, 2010, Plaintiff, who takes Concerta,
26 Fluoxetine and Risperdal, does not have any medication side effects; and
27 the plan is to "[c]ontinue current medication at current dosage since he
28 is doing well and not having side effects." (See AR 531-32). On

1 October 22, 2010, Plaintiff takes Prozac, Concerta, Risperdal and
2 Ritalin, and Plaintiff's adoptive father reported that "[Plaintiff] is
3 doing well." (See AR 539-40).

4
5 b. 2011-2012

6
7 On February 2, 2011, Plaintiff "[h]as done well on concerta 36x2,
8 Fluoxetine 80 mgm and rispersdal .5 mgm a day. Occasionally takes
9 Ritalin 20 at 5 pm" and "no medication side effects noted[.]" (See AR
10 643-64). On May 10, 2011, Plaintiff was taking Fluoxetine and
11 Risperdal, and the plan is to "[r]ecommend continuing medication as
12 patient is stable." (See AR 660-61). On July 21, 2011, Plaintiff was
13 taking Concerta, Ritalin, Prozac and Risperdal, "Patient's mother
14 reports that patient doing well current combination of medication,"
15 Plaintiff did not report any side effects from the medication, and
16 Plaintiff was eating well, sleeping well, and had fewer episodes of
17 agitation; and the findings of the mental status examination were
18 unremarkable (i.e., pleasant and cooperative manner; alert, clear and
19 oriented; normal motor activity; mostly euthymic; congruent speech;
20 coherent, relevant and logical thought process; no psychotic or
21 inappropriate thought content; no perceptual disturbances; and no
22 suicidal or homicidal ideation). (See AR 675-77). On September 15,
23 2011, Plaintiff was taking Concerta, Ritalin, Prozac and Risperdal,
24 "Father reports that patient has been on this [sic] medications for long
25 time and doing well;" and Plaintiff's mental status examination was
26 unremarkable. (See AR 718-19). On October 6, 2011 (with a new
27 psychiatrist), "Mother reported (and [Plaintiff] confirmed) that
28 [Plaintiff] has been on the same medications since grade 6th and

1 generally doing well", Plaintiff was going to try a lower dosage of
2 Concerta to see if it helped his impulsivity, and Plaintiff did not
3 suffer any side effects from the medication; and Plaintiff's mental
4 status examination was unremarkable. (See AR 729-32). On December 9,
5 2011 (with the new psychiatrist), the doses of Concerta and Prozac would
6 be cut, "Father stated that [Plaintiff] still takes Ritalin in the
7 afternoon and he uses that as needed when he is really impulsive or
8 agitated and it helps him when needed;" and Plaintiff's mental status
9 examination was unremarkable. (See AR 761-63). On March 16, 2012, the
10 reduction of the doses was "not good at all" (Plaintiff was more
11 unstable, stressed, frustrated, angry, sad and had mood changes), and
12 the doses of Concerta and Prozac would be returned to their normal
13 levels; and Plaintiff's mental status examination showed he was somewhat
14 depressed, and his affect was mood congruent and restricted in range
15 (which his adoptive father attributed to the change in his doses, and
16 Plaintiff could not relate his changed mood and increased level of
17 frustration to any new stressors). (See AR 815-18). On July 6, 2012,
18 Plaintiff was taking Methyphenidate, Fluoxetine, Risperdal, and
19 Methylphenidate, "Mother (and [Plaintiff] reported [Plaintiff] has been
20 doing well on current medications. He is back to 'his normal' on the
21 higher dose of the stimulant", and Plaintiff denied uncontrolled
22 symptoms of attention problem, anger or mood disorder; and Plaintiff's
23 mental status examination was unremarkable. (See AR 845-47). On August
24 8, 2012, Plaintiff stated he has been taking his medication and has not
25 had an anger outburst in the last two months, and Plaintiff was found to
26 be more talkative and less depressed and anxious. (See AR 861-62). On
27 October 22, 2012, "[Plaintiff] reported (and his mother confirmed) that
28 he has been doing generally well on current medications;" and

1 Plaintiff's mental status examination was unremarkable. (See AR 870-
2 72).

3
4 The objective medical evidence supports the ALJ's finding that
5 Plaintiff had only mild weakness in his right side. (See AR 17). A
6 Physical Therapy MTU Summary for the period October 2005 to April 2007,
7 which was completed on May 8, 2009, stated, inter alia, that:
8 Plaintiff's mother "does not have any concerns on Cody's physical
9 abilities, she is very pleased with his progress"; Plaintiff has
10 appropriate social/interactive skills, including giving eye contact,
11 following 1- and 2-step commands, staying on task in one place;
12 Plaintiff is independent with respect to most daily living skills
13 (except needs supervision on curbs and in and out of bathtub); Plaintiff
14 is "ambulatory with good stamina and strength," "plays sports at school
15 and at home," and "rides bikes and is able to get around the home and
16 community independently"; Plaintiff has mild hypertonia (increased
17 tension of the muscles) in his right and left lower extremities;
18 Plaintiff has normal range of motion, good balance, and normal muscle
19 strength; Plaintiff has a good functional gait pattern, but tends to
20 drag his right toe and to decrease his right arm swing when rushing; and
21 "Physical therapy is not recommended at this time and will recommend
22 patient to participate in school, home and community physical
23 activities." (See AR 450-53).

24
25 Similarly, an Occupational Therapy MTU Summary for the period June
26 12, 2008 to June 30, 2009, completed on July 1, 2009, stated, inter
27 alia, that Plaintiff has appropriate social/interactive skills;
28 Plaintiff is independent with respect to most daily living skills

1 (except needs supervision with bathing); Plaintiff has normal tone in
2 his left upper extremity and very mild hypertonia in his right upper
3 extremity (right arm and hand); Plaintiff has a full active and passive
4 range of motion in his bilateral upper extremities; Plaintiff has good
5 balance; Plaintiff's upper extremity strength in both arms and hands is
6 within normal limits; Plaintiff is "ambulatory with good stamina and
7 strength," "plays sports at school and at home," and "rides bikes and is
8 able to get around the home and community independently"; and "There are
9 no present concerns for his advanced [daily living] skills and use of
10 right arm and hand. (See AR 458-61).

11
12 An Occupational Therapy MTU Summary for the period June 30, 2009 to
13 June 28, 2010, completed on June 28, 2010, stated, inter alia, that
14 Plaintiff has appropriate social/interactive skills; Plaintiff is mostly
15 independent with respect to most functional skills (he needs moderate
16 assistance drawing an X with a pencil and needs supervision bathing);
17 Plaintiff has normal tone in his left upper extremity and very mild
18 hypertonia in his right upper extremity (right arm and hand); Plaintiff
19 has a full active and passive range of motion in his bilateral upper
20 extremities; Plaintiff has good balance; Plaintiff's upper extremity
21 strength in both arms and hands is within normal limits; Plaintiff "is
22 ambulatory with good stamina and strength," "plays sports at school and
23 at home," and "rides bikes and is able to get around the home and
24 community independently;" and "There are no present concerns for his
25 advanced [daily living] skills and use of right arm and hand." (See AR
26 462-65). A Kaiser Permanente Progress Note dated July 3, 2012 reflected
27 that because of Plaintiff's recent injury, Plaintiff had tenderness over
28 his left neck muscles and a decreased range of motion and has had some

1 residual right upper extremity strength/fine motor skill issues, but has
2 "[m]ade a great recovery overall." (See AR 835-36).

3
4 On April 19, 2012, consultative examiner Sarha L. Maze, M.D.
5 (neurologist) stated the following positive findings from the
6 neurological examination: Plaintiff's voice is somewhat soft; he has
7 slight right upper body weakness; he has a slight slowness on the right
8 for finger-nose-finger and rapid alternating movements; rhythmic-toe-
9 tapping is performed with mild slowness on the right and performed well
10 on the left; and with respect to gait, the Romberg test is equivocally
11 positive, and he ambulates in a very stable manner, walks independently
12 and is unsteady with attempted tandem walk. Dr. Maze found that
13 Plaintiff has a "slight slowness with coordinated movements in the right
14 side of his body," but that he "compensates very well for his slight
15 right body weakness." (See AR 801-04). As the ALJ noted, Plaintiff was
16 determined to be neurologically intact throughout the course of
17 treatment (AR 19, citing AR 261-567, 729-800, 805-928) and "[t]here was
18 no other significant positive findings related to the claimant's mild
19 right arm weakness due to history of traumatic brain injury at age four
20 months documented in the record" (AR 19).

21
22 The objective medical evidence also supports the ALJ's finding that
23 Plaintiff's binocular vision disorder was effectively treated. (AR 17).
24 On October 29, 2010, Plaintiff was diagnosed with binocular vision
25 disorder and was prescribed home ocular therapy (exercises). (See AR
26 630-35). On February 4, 2011, Plaintiff was told to continue with his
27 home ocular therapy. (See AR 651-53). On August 11, 2011, Plaintiff
28 had an eye examination, which showed that Plaintiff's visual acuity in

1 both eyes was 20/20; Plaintiff was reported to be happy with the
2 progress of the orthoptics at home; and Plaintiff was released from the
3 program, but was advised to continue to do certain exercises as
4 maintenance. (See AR 700-06). There is no indication at the time of
5 the April 19, 2012 neurological consultative examination that Plaintiff
6 was suffering from double vision. (See AR 802-03). On June 25, 2012
7 (the day after suffering a blunt injury to the head), Plaintiff reported
8 seeing double; a CT scan of his head taken the day before showed normal
9 results; and Plaintiff was diagnosed with intermittent exotropia with
10 double vision and mild hyperopia. (See AR 822-24, 829-30). On July 9,
11 2012, it was noted that Plaintiff "see[s] double with out [sic] glasses,
12 but not with using both eyes" and "see[s] double monoc with glasses each
13 eye"; and Plaintiff was restarted on home ocular therapy. (See AR 852-
14 60). On July 25, 2012 (the day after receiving new glasses), Plaintiff
15 reported he still had double vision without his glasses. (See AR 880-
16 81). On August 7, 2012, it was noted that Plaintiff's current
17 orthoptics treatment was related to Plaintiff's recent injury and was
18 not connected to any past treatments; Plaintiff reported that he was
19 doing great with his new glasses with a prism, but that he saw double
20 when he took them off; and Plaintiff was told to continue with the home
21 ocular therapy. (See AR 884-92). On August 28, 2012, Plaintiff
22 reported that he had made good progress with the orthoptics at home; and
23 Plaintiff was told to do a modified home ocular therapy. (See AR 899-
24 04). On September 20, 2012, Plaintiff reported that he still has double
25 vision, which is slightly improved with the glasses, and that he is
26 improving very slowly. (See AR 905-07). On September 27, 2012,
27 Plaintiff reported he still gets double vision with his old glasses,
28 that he does not get double vision with his new glasses (but still has

1 a problem with depth perception), and that he had made overall good
2 progress with the orthoptics at home; and Plaintiff was told to continue
3 with a modified home ocular therapy. (See AR 909-14). On October 16,
4 2012, Plaintiff reported he did not see double with his new glasses,
5 that he saw double with his old glasses (but did not have any more
6 headaches), and that he "[s]till feels off but getting better";
7 Plaintiff was prescribed a new pair of glasses with less prism in order
8 to improve depth perception and was told to continue the same home
9 ocular therapy. (See AR 920-25).

10
11 The Court's review of the record reveals that the ALJ provided
12 clear and convincing reasons for not finding Plaintiff's testimony fully
13 credible.

14
15 B. Lay Witness Testimony

16
17 Plaintiff's mother made the following statements in a Function
18 Report-Adult-Third Party dated August 31, 2011:

19
20 (1) she has known Plaintiff since birth, Plaintiff lives at
21 home, and she spends time with Plaintiff after school and on
22 weekends teaching him life skills; (2) with respect to daily
23 activities, Plaintiff wakes up, takes medication, goes to
24 school, does chores after school, does homework, watches
25 television, and (in his spare time) talks with friends and
26 practices magic tricks; (3) when told, Plaintiff plays video
27 games with his 9-year old sister and/or takes her swimming;
28 (4) when told, Plaintiff gives water to dogs; (5) she has to

1 intervene when Plaintiff argues with his sister; (6) Plaintiff
2 could use his right arm as a baby, but when he was four months
3 old an incident (Shaking Baby Syndrome) caused him to be
4 paralyzed on his right side; (7) with constant reminders,
5 Plaintiff can dress according to weather conditions, bathe
6 (use soap!, clean ears!), shave, cut fingernails and toenails,
7 and take medication and acne creams; (8) Plaintiff prepares
8 his own breakfast daily and dinner approximately two times a
9 week (frozen dinners, sandwiches, cereal, reheats leftovers);
10 (9) with reminders, including written reminders, Plaintiff
11 does household chores -- putting away dishes and laundry,
12 giving dogs water, mowing (with supervision) -- after school
13 (approximately 1/2 hour) and every other weekend (mowing, 1
14 hour); (10) Plaintiff goes outside 5 days a week (but
15 sometimes less, and not to hang out with friends) on foot or
16 skateboard or riding in a car; Plaintiff does not drive
17 because he is scared and not mature enough (he has tantrums
18 and gets angry about little things); (11) Plaintiff shops in
19 stores once a month for magic tricks and clothes (his mom does
20 most shopping); (12) Plaintiff does not pay bills, but he can
21 count change, handle a savings account and use a checkbook
22 (however, he does not know how to write a check or use an ATM
23 machine); (13) Plaintiff's hobbies and interests are Boy
24 Scouts (which ended), Eagle Scouts (with a lot of help),
25 television, magic, and school friends; (14) Plaintiff phones
26 others and does things with others (only at school), and
27 regularly goes to doctor appointments and school dances (2
28 times a year); (15) Plaintiff's condition affects his walking

1 (he sometimes drags his toes), talking (difficult to
2 understand his ideas; he has speech at school), hearing (does
3 not hear what others say), seeing (double vision), memory
4 (short term), completing tasks (that involve steps),
5 concentration (has medication for ADHD), understanding,
6 following instructions, and using hands (his right hand has no
7 strength and he drops things); (16) Plaintiff can walk 1/2
8 hour before needing to rest for 10 minutes; (17) Plaintiff can
9 pay attention for 20 to 30 minutes (when medicated); (18)
10 Plaintiff finishes what he starts; (19) Plaintiff has
11 difficulty following instructions for recipes, but can follow
12 the instructions for chores; (20) Plaintiff can follow only
13 the first and second spoken instructions, but then will forget
14 or get confused; (21) Plaintiff gets along well with teachers
15 (although he has a hard time asking questions), but he argues
16 with his parents; (22) Plaintiff does not handle stress well;
17 he yells and has tantrums; (23) Plaintiff does not handle
18 changes in routine well; (24) When Plaintiff does not take
19 medication, he has impulsive behaviors, such as turning off
20 water to the washer/dryer and toilet, disconnecting the garage
21 door, standing on the outer edge of the staircase, and
22 standing on a chair to look out the window; (25) Plaintiff
23 needs glasses for double vision; he has done eye therapy
24 (exercises) for more than a year; and (26) even with weekly
25 physical and occupational therapy and even with home therapy,
26 Plaintiff still has partial paralysis in the right hand.

27
28 (See AR 187-94).

1 At the hearing, Craig Bissett, Plaintiff's adoptive father (AR 47),
2 testified as follows:

3
4 He has been involved with Plaintiff since Plaintiff was 7
5 years old and adopted Plaintiff when Plaintiff was 9 years
6 old. (See AR 48, 61). Plaintiff got better for a while, but
7 in the 7th or 8th grade Plaintiff had to go to the Sylvan
8 Center 2 or 3 days a week (tests initially showed he was one
9 or two levels behind grade level in the majority of subjects).
10 (See AR 48-49). Plaintiff has always been in special
11 education programs, and has done Individualized Education
12 Programs every year. Plaintiff's high school did not have a
13 separate program or separate modular, but rather integrated
14 him in the class and had aides to assist him with different
15 classes. Prior to beginning college, Plaintiff tested at the
16 lowest levels in English and math. Plaintiff is taking one
17 class (a low-level class geared for struggling students), some
18 of it online and some of it with assistance from a teacher, at
19 Victor Valley College in the High Desert. (See AR 55-57).
20 Plaintiff has difficulty remembering simple directions (i.e.,
21 taking a pizza out of the oven when the timer goes off, doing
22 a task he was not supposed to do while in a high school job
23 training program), and has difficulty filling out simple forms
24 (at the dentist or the doctor's office) and following simple
25 instructions (i.e., a simple cooking recipe). He gets very
26 frustrated and angry and shuts down (i.e., a college
27 instructor told him he was going to have to take a couple of
28 tests next week, he gets angry with himself, he lashes out at

1 people). He acts impulsively (i.e., grabbing the steering
2 wheel when his mother is driving). He does not have any
3 concept of money (i.e., thinking a \$3.99 price at the gas
4 station is for the whole car, not knowing how much change he
5 is supposed to receive after paying for an item). He has
6 difficulty taking care of himself; his mother has to tell him
7 to clip his nails, to wash himself, and to put on deodorant.
8 (See AR 53-54, 59-61). Plaintiff no longer lashes out at
9 family members because he is on a lot of medication. (See AR
10 60). Plaintiff had a double vision issue years ago. His
11 vision problems improved and became stable. When Plaintiff
12 recently was hit in the head, his vision problems reappeared.
13 Plaintiff has three pairs of glasses with different prism
14 levels. After wearing one pair of glasses for a while, he
15 begins to have double vision and headaches, and then changes
16 to another pair of glasses. (See AR 59). Plaintiff does
17 house chores, such as helping with yard work and mowing or
18 picking up leaves, but requires supervision because he wanders
19 off or becomes confused about the task. Plaintiff is not
20 given a specific schedule for chores based on his inability to
21 remember. (See AR 54-55). Plaintiff has done some bike
22 riding, but he stopped after injuring himself during a fall.
23 Plaintiff has skateboarded with a helmet and gloves, but he
24 had an accident due to a problem with balance. His partial
25 paralysis makes it more difficult for him to use his right
26 hand and arm when the weather gets colder. As a child,
27 Plaintiff tried to play baseball (but he got injured due to
28 his lack of coordination) and soccer (which Plaintiff could

1 not play). Plaintiff went to summer camp, but needed to be
2 taken from point to point and to have everything broken down.
3 (See AR 57-58). Plaintiff was involved in Boy Scouts and
4 became an Eagle Scout, which happened only because of the
5 great effort and extra time given by the leader and the
6 efforts of Plaintiff's parents. (See AR 58-59).
7

8 After briefly summarizing the testimony and statements provided by
9 Plaintiff's mother and adoptive father, the ALJ provided the following
10 assessment:
11

12 While a layperson can offer an opinion on a diagnosis,
13 the severity of the claimant's symptoms, or the side effects
14 of medications in relationship to the claimant's ability to
15 work, the opinion of a layperson is far less persuasive on
16 those same issues than are the opinions of medical
17 professionals as relied on herein. The opinion of the
18 claimant's adoptive father/stepfather and mother are not
19 unbiased ones because they have a familial motivation to
20 support the claimant as well as a financial interest in seeing
21 the claimant receive benefits, given they are the claimant's
22 only source of financial support. Most important, their
23 statements are not supported by the clinical or diagnostic
24 medical evidence that is discussed elsewhere in this decision.
25 Notably, at psychiatric medication management visits and
26 psychotherapy sessions, which the claimant routinely attended
27 with his adoptive father or mother, the claimant's parents
28 consistently reported the claimant was doing well with

1 psychiatric medications. The undersigned finds the statements
2 of the claimant's adoptive father/stepfather are not credible
3 to the extent their statements are inconsistent with the
4 residual functional capacity assessment herein.

5
6 (AR 21-22).

7
8 The ALJ is required to give germane reasons for rejecting or
9 partially rejecting lay witness testimony. See Carmickle v.
10 Commissioner, 533 F.3d 1155, 1164 (9th Cir. 2008); Greger v. Barnhart,
11 464 F.3d 968, 972 (9th Cir. 2006); Smolen v. Chater, 80 F.3d 1273, 1288-
12 89 (9th Cir. 1996).

13
14 Some of the reasons given by the ALJ -- that Plaintiff's mother and
15 adoptive father are not medical professionals, and that the testimony
16 and statements they provided are biased because they have a financial
17 interest, and unsupported by the clinical or diagnostic medical evidence
18 -- were not germane reasons for discrediting or partially discrediting
19 their testimony. See Valentine v. Commissioner Social Security Admin.,
20 574 F.3d 685, 694-95 (9th Cir. 2009) ("[F]riends and family members in
21 a position to observe a claimant's symptoms and daily activities are
22 competent to testify as to [his or] her condition."); Sprague v. Bowen,
23 812 F.2d 1226, 1232 (9th Cir. 1987)("[D]escriptions by friends and
24 family members in a position to observe [Plaintiff's] symptoms and daily
25 activities have routinely been treated as competent evidence."); Smolen
26 v. Chater, supra, 80 F.3d at 1289 (Discrediting "family witnesses"
27 because they were "understandably advocates, and biased" "amounted to a
28 wholesale dismissal of the testimony of all the witnesses as a group and

1 therefore does not qualify as a reason germane to each individual who
2 testified. Moreover, the same could be said of any family member who
3 testified in any case. The fact that a lay witness is a family member
4 cannot be a ground for rejecting his or her testimony."); Taylor v.
5 Commissioner of Social Sec. Admin., 659 F.3d 1228, 1234 (9th Cir. 2011)
6 ("Nor under our law could the ALJ discredit [their] lay testimony as
7 not supported by medical evidence in the record.") (quoting Bruce v.
8 Astrue, 557 F.3d 1113, 1116 (9th Cir. 2009).

9
10 However, the ALJ's discrediting of the testimony and statements by
11 Plaintiff's mother and adoptive father because it was inconsistent with
12 statements they repeatedly made to medical personnel about Plaintiff's
13 doing well on medication was a germane reason. See Bayliss v. Barnhart,
14 427 F.3d 1211, 1218 (9th Cir. 20015) ("Inconsistency with the medical
15 evidence" is a germane reason for discrediting the testimony of a lay
16 witness); Lewis v. Apfel, 236 F.3d 503, 511 (9th Cir. 2001) ("One reason
17 for which an ALJ may discount lay testimony is that it conflicts with
18 medical evidence."). As discussed above, the record is replete with
19 statements made by the Plaintiff's mother and adoptive father about
20 Plaintiff doing well on his medication. (See AR 262 [January 5, 2009];
21 326-27 [October 7, 2009, noting that Plaintiff "is accompanied by mother
22 and has been doing well"]; 375-76 [January 6, 2010, noting that
23 Plaintiff "is accompanied by mother and has been doing well" and that
24 "[n]o problems with hyperactivity, impulsivity, and distractibility";
25 487-78 [April 21, 2010, noting that Plaintiff "is accompanied by mother,
26 that he "had 1 incident of impulsively hitting a door at home on a day
27 when he did not take his afternoon Methylphenidate," that "[o]verall, he
28 has continued to do well and is more socially and emotionally mature,'

1 and that "[n]o side effect from medicines."; 531-32 [September 2, 2010,
2 noting that Plaintiff does not suffer any side effects and to
3 "[c]ontinue current medication at current dosage since he is doing well
4 and not having side effects"]; 539-40 [October 22, 2010, noting that
5 "[a]ccording to dad [Plaintiff] is doing well"]; 643-64 [February 2,
6 2011, noting that Plaintiff, who was with his adoptive father, has done
7 well on prescribed medications and that "no medication side effects
8 noted"]; 660-61 [May 10, 2011, recommending to continue the medication
9 "as patient is stable"]; 675-76 [July 21, 2011, noting that "Patient's
10 mother reports that patient doing well current combination of
11 medication"]; 718-19 [September 15, 2011, noting that "Father reports
12 that patient has been on this [sic] medications for long time and doing
13 well"]; 729-32 [October 6, 2011, noting that "Mother reported (and
14 [Plaintiff] confirmed) that [Plaintiff] has been on the same medications
15 since grade 6th and generally doing well"]; 761-62 [December 9, 2011,
16 noting that "Father stated that [Plaintiff] still takes Ritalin in the
17 afternoon and he uses that as needed when he is really impulsive or
18 agitated and it helps him when needed"]; 845-46 [July 6, 2012, noting
19 that "Mother (and [Plaintiff] reported [Plaintiff] has been doing well
20 on current medications" and that "[h]e is back to 'his normal' on the
21 higher dose of the stimulant"]; 861-62 [August 8, 2012, noting that
22 Plaintiff stated he has been taking his medication and has not had an
23 anger outburst in the last two months]; and 870-71 [October 22, 2012,
24 noting that "[Plaintiff] reported (and his mother confirmed) that he has
25 been doing generally well on current medications"])).

26
27 The Court also finds that even assuming, arguendo, that the ALJ
28 failed to give a germane reason for discrediting the testimony of

1 Plaintiff's mother and adoptive father, any error was harmless. See
2 Tommasetti v. Astrue, 533 F.3d 1035, 1038 (9th Cir. 2008)(an ALJ's error
3 is harmless "when it is clear from the record . . . that it was
4 'inconsequential to the ultimate nondisability determination.'"); Burch
5 v. Barnhart, 400 F.3d 676, 679 (9th Cir. 2005)("A decision of the ALJ
6 will not be reversed for errors that are harmless."). Thus, the ALJ's
7 error, if any, in failing to properly reject the lay witness testimony
8 is harmless because the ALJ provided clear and convincing reasons for
9 finding Plaintiff's testimony not fully credible, and that testimony
10 essentially described the same limitations as those testified to by
11 Plaintiff's mother and adoptive father. See Molina v. Astrue, 674 F.3d
12 1104, 1122 (9th Cir. 2012)("Although the ALJ erred in failing to give
13 germane reasons for rejecting the lay witness testimony, such error was
14 harmless given that the lay testimony described the same limitations as
15 Molina's own testimony, and the ALJ's reasons for rejecting Molina's
16 testimony apply with equal force to the lay testimony.").

17
18 **B. The ALJ Properly Developed and Considered the Vocational Evidence**
19 **in this Case**
20

21 Plaintiff asserts the ALJ erred in finding, based on the vocational
22 expert's testimony, that Plaintiff is able to perform the occupations of
23 hand packager, electronics worker, and kitchen helper. (See Joint Stip.
24 at 20-22). Defendant asserts that substantial evidence supports the
25 ALJ's finding that Plaintiff could perform such jobs. (See Joint Stip.
26 at 22-24).
27
28

1 At the hearing, the ALJ asked the vocational expert to assume
 2 whether the following hypothetical person -- a high school graduate;
 3 limited to medium work; able to perform two- to three-step complex
 4 instructions; limited to a non-public environment (not working directly
 5 with the public); limited to occasional (1/3 of a day) inter-personal
 6 contact with others; no fast-paced work such as a conveyor belt; no
 7 ladders, ropes or scaffolds; no extreme cold; no hazardous machinery or
 8 unprotected heights -- could perform any work. (AR 64).

9
 10 The vocational expert testified that such a person could perform
 11 the following jobs: (1) hand packager, Dictionary of Occupational Titles
 12 ("DOT") 920.587-018⁵ (unskilled, Specific Vocational Preparation ("SVP")
 13 2, 16,000 positions in the regional economy, 165,000 positions in the
 14 national economy); (2) electronic worker, DOT 726.687-010⁶ (unskilled,

15
 16 ⁵ DOT 920.587-018 (packager, hand) requires inter alia: strength
 17 ("Medium work - Exerting 20 to 50 pounds of force occasionally
 18 (Occasionally: activity or condition exists up to 1/3 of the time)
 19 and/or 10 to 25 pounds of force frequently (Frequently: activity or
 20 condition exists from 1/3 to 2/3 of the time) and/or greater than
 negligible up to 10 pounds of force constantly (Constantly: activity or
 condition exists 2/3 or more of the time) to move objects"), and
 constant (2/3 or more of the time) reaching, handling and fingering.
 DOT 920.587-018, 1991 WL 687916.

21 ⁶ DOT 726.687-010 (electronics worker) requires inter alia:
 22 strength ("Light work - Exerting up to 20 pounds of force occasionally
 23 . . . and/or up to 10 pounds of force frequently . . . and/or a
 24 negligible amount of force constantly"); language ("READING:
 25 Passive vocabulary of 5,000-6,000 words. Read at rate of 190-215 words
 26 per minute. Read adventure stories and comic books, looking up
 27 unfamiliar words in dictionary for meaning spelling, and pronunciation.
 28 Read instructions for assembling model cars and airplanes."); writing
 ("Write compound and complex sentences, using cursive style, proper end
 punctuation, and employing adjectives and adverbs."); speaking ("Speak
 clearly and distinctly with appropriate pauses and emphasis and correct
 punctuation, variations in word order, using present, perfect, and
 future tenses"); frequent reaching, handling and fingering; and
 (continued...)

1 SVP 2, 5,000 positions in the regional economy, 80,000 positions in the
2 national economy; and (3) dishwasher, DOT 318.687-010⁷ (unskilled, SVP
3 2, 17,000 positions in the regional economy, 280,000 positions in the
4 national economy). (See AR 65-67).

5
6 The vocational expert testified that the following changes to the
7 original hypothetical would not have any effect on these jobs: the
8 limitation that such a person could not walk on uneven terrain (see AR
9 67-68).

10
11 The vocational expert testified that the following changes to the
12 original hypothetical would effect that person's ability to perform all
13 of these jobs: the limitation that such a person had a problem with
14 depth perception (see AR 68-69).

15
16 The vocational expert testified that the following changes to the
17 original hypothetical would eliminate all of these jobs: the limitation
18 that such a person would need additional supervision on a continual
19 basis to remain on task (see AR 70-71), the limitation that such a
20 person would work at a reduced productivity rate (25% below average)
21 (see AR 72), and the limitation that such a person would require
22

23 ⁶ (...continued)
24 occasional depth perception. DOT 726.687-010, 1991 WL 679633.

25 ⁷ DOT 318.687-010 (kitchen helper) requires inter alia: strength
26 ("Medium work - Exerting 20 to 50 pounds of force occasionally . . .
27 and/or 10 to 25 pounds of force frequently . . . and/or greater than
28 negligible up to 10 pounds of force constantly . . . to move objects.");
constant reaching and fingering; occasional fingering; and ;
frequent reaching, handling and fingering; and occasional exposure to
extreme cold. DOT 318.687-010, 1991 WL 672755.

1 unscheduled breaks that would accumulate to about 4 hours out of the
2 work week (because he or she is going to be off task)(see AR 72-73).

3
4 The vocational expert testified that the following changes to the
5 original hypothetical would eliminate the hand packager and dishwasher
6 jobs (but not the electronic worker job): the limitation that such a
7 person could stand and walk 2 out of 8 hours (see AR 69-70).

8
9 The vocational expert testified that the following changes to the
10 original hypothetical would eliminate the dishwasher job: the limitation
11 that such a person had monocular vision (vision in only one eye) (see AR
12 73-74).

13
14 The ALJ found that, considering Plaintiff's age, education, work
15 experience, and residual functional capacity, Plaintiff was able to
16 perform work as an hand packager (medium, unskilled), electronic worker
17 (light, unskilled), and dishwasher (medium, unskilled), all of which
18 exist in significant numbers in the national economy. (AR 22-23).

19
20 Plaintiff's contention that he is not able to perform the
21 occupation of hand packager because of his right upper extremity
22 impairment and his binocular vision disorder (see Joint Stip. at 20-21)
23 fails. The ALJ's finding that Plaintiff's RFC did not include any
24 limitation with respect to his right upper extremity or with respect to
25 his binocular vision disorder was supported by the objective medical
26 evidence, as discussed above, and the ALJ properly discredited the
27 testimony that Plaintiff, Plaintiff's mother, and Plaintiff's adoptive
28

1 father gave concerning Plaintiff's alleged limitations in those areas,
2 as discussed above.

3
4 Plaintiff's contention that he is not able to perform the
5 occupation of electronics worker because of his language limitations and
6 his right upper extremity impairment and because it requires occasional
7 depth perception (see Joint Stip. at 22) is also without merit. The
8 ALJ's finding that Plaintiff's RFC did not include any limitation with
9 respect to his language skills (i.e., reading, writing and speaking) was
10 supported by evidence in the record: (1) Plaintiff was noted to be
11 "quite verbal with a good vocabulary" (see AR 451, 455, 464); (2) An
12 April 5, 2011 Individual Program Plan noted that Plaintiff "is doing
13 well in school" (see AR 601, 603); (3) A teacher questionnaire,
14 completed on September 29, 2011, indicated that Plaintiff did not have
15 any problems in conversation and that he used adequate vocabulary and
16 grammar to express his thoughts and ideas (see AR 208); (4) Plaintiff
17 had graduated from high school and was taking a college course (see AR
18 56, 868); and (5) as the ALJ noted, there are no medical source
19 statements stating that Plaintiff has language limitations (AR 21).
20 Although Plaintiff may have had some difficulty in school (see e.g., AR
21 205-07, 570-79, 595), there is no indication that Plaintiff did not have
22 the language skills to perform the electronics worker job.

23
24 Finally, Plaintiff's contention that he is not able to perform the
25 occupation of dishwasher because of his right upper extremity impairment
26 and because it requires occasional exposures to extreme cold
27 temperatures (see Joint Stip. at 22) also fails. The ALJ's finding that
28

1 Plaintiff's RFC did not include any limitation with respect to his right
2 upper extremity was supported by the objective medical evidence, as
3 discussed above. Moreover, the ALJ's RFC determination included the
4 limitation that Plaintiff needed to avoid *extreme cold weather*.
5 However, the DOT description for the dishwasher position only involves
6 *occasional* exposure to extreme cold. See DOT 318.687-010.

7
8 The Court finds that even if the ALJ erred in finding that
9 Plaintiff could perform the occupations of electronics worker and
10 dishwasher, the ALJ's finding that Plaintiff could perform the
11 occupation of hand packager renders any such error harmless.

12
13
14 **ORDER**

15
16 For the foregoing reasons, the decision of the Commissioner is
17 affirmed.

18
19 LET JUDGMENT BE ENTERED ACCORDINGLY.

20
21 DATED: September 9, 2015

22
23 _____
24 /s/
25 ALKA SAGAR
26 UNITED STATES MAGISTRATE JUDGE
27
28